in silence. According to the records, a person was injured as a result of this accident and no thought has been spared for him. He too has a right to see that justice is done.

According to Article 145 of the Federal Constitution only the Attorney-General has the power to institute, conduct or discontinue any proceedings for an offence. Until he makes up his mind the courts have to wait. Magistrates therefore have no business to usurp the functions of the Attorney-General. If the Police are slow complaints should be made to the Attorney-General who in the final analysis is answerable to Parliament.

I would advise magistrates to cease forthwith the practice of discharging not amounting to an acquittal a case when the Police are not ready to proceed. This is only sweeping the dirt under the carpet to produce neat monthly returns. The Police will only institute fresh proceedings as happened in this case and unnecessary paper work and inconvenience is caused. If the police are not ready, the magistrate should adjourn to another date. Even if it takes ten years to dispose a case that is better than pretending to dispose of it early by means not provided by law. So let it be. One of the virtues of the judiciary is patience. If the waiting should become unbearable the remedy lies elsewhere.

I would accordingly set aside the magistrate's order of discharge and acquittal and order that the case be remitted back to the magistrate for disposal according to the provisions of the Criminal Procedure Code.

Order accordingly.

Solicitors: *K.L. Rekhraj & Co.*

PUBLIC PROSECUTOR v. DATUK HAJI HARUN BIN HAJI IDRIS

[O.Cr.J. (Raja Azlan Shah F.J.) May 18, 1976]
[Kuala Lumpur — Federal Territory Criminal Trial No. 2 of 1976]

Criminal Law and Procedure — Statement by accused to police — Whether admissible — Whether amendment to Criminal Procedure Code retrospective in effect — Prevention of Corruption Act, 1961, s. 15 — Criminal Procedure Code (F.M.S. Cap. 6), s. 113.

Legislation — Amending statute — Legislation dealing with procedure or evidence — Whether of retrospective effect.

Evidence — Voluntary statement — Admissibility.

The accused had made a statement to the police on November 22, 1975. This was before the amendment of section 113 of the Criminal Procedure Code which came into force on January 10, 1976. It was argued that the statement was not admissible as the provisions of the former section 113 of the Criminal Procedure Code applied.

Held: (1) the amendment to the Criminal Procedure Code which is purely procedural is to be construed as retrospective in its operation in the absence of any contrary intention expressed in the Code and therefore section 113 of the Criminal Procedure Code as amended applied in this case;

(2) the statement was in any event rendered admissible under section 15 of the Prevention of Corruption Ordinance, 1961, for the purpose of a trial into an offence under that Act, subject to the condition that it is voluntarily made;

(3) on the facts of this case the statement was voluntarily made and was admissible in evidence.

CRIMINAL TRIAL.

Tan Sri Datuk Haji Mohamed Salleh bin Abas, Solicitor-General (*Abu Talib bin Othman* with him) for the Public Prosecutor.

R.R. Chelliah (*P. Vijendran* and *Haji Suhaimi bin Datuk Kamaruddin* with him) for the accused.

Raja Azlan Shah F.J.: Datuk Harun made a statement to the police on November 22, 1975. That was before the amendment of section 113 of the Criminal Procedure Code which came into force on January 10, 1976. He was arrested two days later. His counsel objected to the admissibility of that statement contending that the old provisions of section 113 still applied and it therefore follows that by virtue of that section the statement was not admissible as evidence.

The general rule is that statutes, particularly amending statutes, are *prima facie* prospective, and retrospective effect is not to be given to them unless by clear words or necessary implication. This presumption does not always apply in cases of legislation dealing with procedure or evidence. Before the amendment a statement recorded under section 112 of the Criminal Procedure Code cannot, by virtue of section 113 of the Criminal Procedure Code be used as evidence against the accused. After the amendment such a statement shall be admissible in evidence at his trial. This only means that the rule governing the manner in which such statement can be used as evidence at his trial has been amended. The change is one in procedure; the amendment to section 113 of the Criminal Procedure Code affected the manner in which such evidence is to be enforced. An amending statute which is purely procedurial is to be construed as retrospective in its operation, unless a contrary intention appears. In my opinion, there does not seem to be a contrary intention expressed in section 1 of the Criminal Procedure Code (Amendment and Extension) Act, 1976 that it is to operate prospectively. No person has any vested interest in the course of a procedure if during an investigation that procedure is changed. It follows that section 113 of the Criminal Procedure Code as amended applied in this case.

Assuming the old provisions of section 113 of the Criminal Procedure Code applied, I still think that the statement recorded under the provisions of the Criminal Procedure Code is not rendered inadmissible under section 15 of the Prevention of Corruption Act, 1961 for the purpose of a trial into an offence under that Act, subject of course, to the stringent condition that it was voluntarily made. The old provisions of section 113 of the Criminal Procedure Code are plainly at variance with the provisions of section 15 of the Prevention of Corruption Act, and, in my opinion, cannot be allowed to prevail over the latter for this reason. It would render section 15 of the Prevention of Corruption Act inoperative if the accused's statement is not admissible as evidence at his trial, and, since the Act was enacted later than the Criminal Procedure Code, the provisions of the later Act must prevail if there is any irreconcilable contradiction between their respective provisions. In my judgment, the words "... any statement by an accused person ... made at any time ... whether in the course of a police investigation or not

... shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence..." are designedly very wide and fall to be widely construed, and it would be undesirable in the extreme to narrow their meaning. Admissibility of a statement is one thing; its probative value is another.

The key question was whether the statement was made voluntarily? It was stressed in argument by counsel for the defence that the moment section 112 of the Criminal Procedure Code was read out to the accused it constituted a threat or inducement in the sense that his frame of mind was such that he was bound to make a statement truthfully, whether in answer to any questions or not, and that failure to do so would entail criminal prosecution. In that frame of mind, it was argued, he had no choice but to comply with the request. It was also contended that the accused was presumed to know the law, in particular, section 113 of the Criminal Procedure Code.

Dealing with the second contention, I would like to correct the false impression that every person is presumed to know the law. It would be contrary to common sense and reason if it were so. The rule is that ignorance of the law shall not excuse a man or relieve him from the consequences of a crime.

It was not denied that the accused made the statement in the form in which it appeared. Its validity as evidence was attacked on the ground that when the provisions of section 112 of the Criminal Procedure Code were read out to him, his frame of mind was such that he was bound to answer all questions put to him, otherwise he would be in trouble. In my judgment that contention was a bit far-fetched, and the circumstances did not point in that direction. When the provisions of section 112 of the Criminal Procedure Code were read out to him, it would not be unfair to infer that he was aware of the proviso that he was not obliged to answer any incriminating question. He is an educated man, and legally qualified and has held judicial and legal appointments. I do not think he was likely to be threatened or influenced. He said he knew the law and therefore the possibility that corruption charges might be preferred against him could not have escaped his mind. Further, the statement was made at a date convenient to him and in his cosy office in the presence of his legal advisers. All the indications shewed that the statement had not been obtained in consequence of something said or done by the B.S.N. officers which amounted to an express or implicit threat or promise to him. Looking at the interview as a whole, I am satisfied that the statement was made voluntarily.

Ruling accordingly.

Solicitors: *R.R. Chelliah Bros.; Adlan & Haji Suhaimi.*

PUBLIC PROSECUTOR v. DATUK HAJI HARUN BIN HAJI IDRIS (No. 2)

[O.Cr.J. (Raja Azlan Shah F.J.) May 18, 1976]

[Kuala Lumpur — Federal Territory Criminal Trial No. 2 of 1976]

Criminal Law and Procedure — Trial — Charge of corruption — Whether accused is member of a public body i.e. State Government of Selangor — Whether he solicited gratification — Whether gratification was solicited corruptly — Gratification solicited as inducement to obtain approval of Executive Council in respect of application.

Bribery and Corruption — "Solicit" — "Corrupt" — "Inducement" — Gratification — Menteri Besar — Whether member of Government — Prevention of Corruption Act, 1961, ss. 3(a)(ii), 9(b).

The accused was charged with three charges of corruption. It was alleged that the accused as Mentri Besar, Selangor: (a) solicited the sum of $250,000 for UMNO as an inducement to obtain the approval of the Executive Council in respect of an application for a piece of State land; (b) being a member of a public body accepted for UMNO the sum of $25,000 as an inducement to obtain such approval; (c) accepted for UMNO the sum of $225,000 as an inducement to obtain such approval.

It was also alleged that the accused was a member of a public body, namely, the Government of Selangor, or alternatively that he was an agent of the Ruler of the State of Selangor.

Held: (1) the accused as Menteri Besar was a member of a public body, that is, the Government of Selangor;

(2) on the facts of this case the accused did solicit for UMNO a gratification of $250,000;

(3) the circumstances in which the gratification was solicited gave rise to the inference that it was solicited corruptly;

(4) the accused solicited the gratification as an inducement to obtain the approval of the Executive Council in respect of the application for the land;

(5) the facts showed that the accused accepted a gratification from the Hongkong and Shanghai Bank of $25,000 through Haji Ahmad Razali at the airport on or about August 16, 1972 and that he on or about March 27, 1973 accepted from the Hongkong and Shanghai Corporation a gratification of $225,000 in his office in Kuala Lumpur;

(6) the accused accepted the gratification of $25,000 and $225,000 as an inducement to do an official act in connection with the bank's application for alienation of the land;

(7) on the evidence the prosecution had proved its case in relation to all three principal charges which if unrebutted would warrant the conviction of the accused;

(8) the accused did not rebut the evidence for the prosecution and on all the evidence considered as a whole, the charges against the accused have been proved beyond reasonable doubt.

Cases referred to:-

(1) *Sweeney* v. *Astle* [1923] N.Z.L.R. 1198, 1202.
(2) *Lim Kheng Kooi* v. *Reg* [1957] M.L.J. 199.
(3) *R.* v. *Smith* [1960] 1 All E.R. 256.
(4) *Chempan Varkey* v. *State of Kerala* (1972) Indian Yearly Digest 2099.
(5) *R.* v. *Andrews-Weatherfoil Ltd.* 56 Cr. App. R. 31; [1972] 1 W.L.R. 118; [1972] 1 All E.R. 65.
(6) *Crown Prosecutor* v. *R.K. Pillai* A.I.R. 1948 Mad. 281.
(7) *Imperatrix* v. *Appaji* (1896) I.L.R. 21 Bom. 517.
(8) *B.K. Sen* v. *Prasad* A.I.R. 1945 Pat. 259.
(9) *R.* v. *Swemmer* 15 E. & E. Digest (Rep.) 119.
(10) *In re M.S. Mohiddin* A.I.R. 1942 Mad. 561.
(11) *In re Varadadesikachariar* A.I.R. 1950 Mad. 93.

CRIMINAL TRIAL.

Tan Sri Datuk Haji Mohamed Salleh bin Abas,